

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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HODELL-NATCO INDUSTRIES, INC.,

Plaintiff,

-vs-

SAP AMERICA, INC., et al.,

Defendant.  
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: CASE NO. 1:08 CV 02755

: ORDER

UNITED STATES DISTRICT JUDGE LESLEY WELLS

This Court, having reviewed Hodell's and SAP's deposition designations for Marcia Weissman and the parties' respective objections thereto, resolves those objections as follows.

**I. HODELL'S OBJECTIONS TO SAP'S DEPOSITION DESIGNATIONS OF DEPOSITION TESTIMONY FOR MARCIA WEISSMAN WITH SAP'S REPLIES**

Testimony Designated by SAP	Hodell's Objection to SAP's Designated Testimony	SAP's Reply to Hodell's Objection
18:19-19:16	Lack of personal knowledge, speculation <i>Overruled</i>	A proper foundation has been laid that the witness has been involved in and has personal knowledge of 20 to 25 different SAP Business One implementations. Moreover, the witness here is simply testifying as to facts about a project on which she is <i>currently</i> working, and she has not been asked to speculate as to anything. Simply because the witness states "I believe" or provides a range in a response does not mean that the witness is speculating. These answers are based on the witness's personal knowledge.
19:21-22:16	Lack of personal knowledge, speculation, improper expert opinion with lack of qualifications (Rule 701) <i>Overruled</i>	A proper foundation has been laid that the witness has been involved in and has personal knowledge of 20 to 25 different SAP Business One implementations.  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
22:17-23:11	Speculation, lack of personal knowledge, improper expert opinion with lack of qualifications (Rule 701), improper hypothetical <i>Sustained</i>	A proper foundation has been laid that the witness has been involved in and has personal knowledge of 20 to 25 different SAP Business One implementations.  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
27:10-13	Lack of personal knowledge, speculation <i>Overruled</i>	A proper foundation has been laid that the witness worked with people employed by Hodell. The witness is simply testifying as to her personal belief.  Moreover, this statement may be offered against LSi because it was made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).

29:06-32:17	Speculation, lack of personal knowledge, improper expert opinion with lack of qualifications (Rule 701)	<p>A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to Hodell's network capabilities.</p> <p>There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.</p>
32:18-34:10	Hearsay; foundation, lack of personal knowledge, speculation	<p>A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to Hodell's network capabilities.</p> <p>The statements by Joe Guagenti are not hearsay if they are being offered against LSi because they were made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>
34:14-35:07	Speculation, lack of personal knowledge, improper expert opinion with lack of qualifications (Rule 701)	<p>A proper foundation has been laid that the witness has previous experience "installing wires" and "hooking up computers to each other" and the witness confirmed the same before this line of questioning.</p> <p>There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.</p>
37:14-38:11	Hearsay; lack of personal knowledge	<p>A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to testing.</p> <p>There is no hearsay if these statements are offered against LSi because these statements were made by LSi employees on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>
39:07-40:03	Hearsay; lack of personal knowledge	<p>With respect to 39:7-12: <i>Overruled</i></p> <p>There is no reasonable objection.</p> <p>With regard to 39:13-40:30: <i>Sustained</i></p> <p>A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to Hodell's network</p>



		capabilities.  There is no hearsay if these statements are offered against LSi because these statements were made by LSi employees on a matter within the scope of that relationship and while it existed. 801(d)(2).
41:21:42:09	Hearsay  <i>Sustained</i>	A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to testing.  There is no hearsay if these statements are offered against Hodell because these statements were made by Hodell employees on a matter within the scope of that relationship and while it existed. 801(d)(2).
45:16-46:23	Hearsay; lack of personal knowledge  <i>Overruled</i>	A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to testing.  There is no hearsay if these statements are offered against Hodell because these statements were made by Hodell employees on a matter within the scope of that relationship and while it existed. 801(d)(2).
49:25-50:17	Speculation; improper expert opinion with lack of qualifications (Rule 701)  <i>Sustained</i>	A proper foundation has been laid that the witness has been involved in and has personal knowledge of 20 to 25 different SAP Business One implementations and that she worked as a consultant on the Hodell project.  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
51:02-12	Lack of foundation, lack of personal knowledge, speculation  <i>Overruled</i>	A proper foundation has been laid that the witness has been involved in and has personal knowledge of 20 to 25 different SAP Business One implementations and that she worked as a consultant on the Hodell project.  Moreover, this statement may be offered against LSi because it was made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).
55:18-56:21	Hearsay	A proper foundation has been laid that the witness worked as a consultant on the Hodell project and

	<i>Overruled</i>	discussed issues relating to volume of transactions.  These out-of-court statements may be offered against LSi because they were made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).
56:22-58:08	Hearsay; improper expert opinion with lack of personal knowledge (Rule 701)  <i>Overruled</i>	A proper foundation has been laid that the witness worked as a consultant on the Hodell project and discussed issues relating to volume of transactions and the InFlight code.  These out-of-court statements may be offered against LSi because they were made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).  There is no 701 violation. The witness's testimony is rationally based on the witness's perception and helpful to determining facts at issue.
88:25-89:21	Hearsay  <i>Overruled</i>	These out-of-court statements may be offered against Hodell because they were made by Hodell employees on a matter within the scope of that relationship and while it existed. 801(d)(2).



II. SAP'S OBJECTIONS TO HODELL'S COUNTER-DESIGNATION OF DEPOSITION TESTIMONY FOR MARCIA WEISSMAN

Testimony Counter-Designated by Hodell	SAP's Objection to Counter-Designated Testimony
75:16-76:1	<ul style="list-style-type: none"> <li>SAP objects to certain questions contained herein on the basis of improper form. <i>Overruled</i></li> </ul>
77:6-8.	<ul style="list-style-type: none"> <li>SAP objects to this question on the basis of improper form. <i>Overruled</i></li> </ul>
77:15-22.	<ul style="list-style-type: none"> <li>SAP objects to this question on the basis of improper form. <i>Sustained</i></li> </ul>
78:18-79:1	<ul style="list-style-type: none"> <li>SAP objects to this question on the basis of improper form. <i>Sustained</i></li> </ul>
79:18-80:3.	<ul style="list-style-type: none"> <li>SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Sustained</i></li> <li>SAP additionally objects to this question on the basis of improper form. <i>"</i></li> </ul>
87:2-88:24.	<ul style="list-style-type: none"> <li>SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Sustained</i></li> <li>SAP additionally objects to certain questions herein on the basis of improper form. <i>"</i></li> </ul>
89:22-91:7.	<ul style="list-style-type: none"> <li>SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Sustained</i></li> <li>SAP additionally objects to certain questions herein on the basis of improper form. <i>"</i></li> </ul>
92:16-96:14.	<ul style="list-style-type: none"> <li>SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Sustained</i></li> <li>SAP additionally objects to certain questions herein on the basis of improper form.</li> </ul>
98:14-99:4.	<ul style="list-style-type: none"> <li>SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Sustained</i></li> <li>SAP additionally objects to certain questions herein on the basis of improper</li> </ul>

	form.
102:12-104:17.	<ul style="list-style-type: none"> <li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li> <li>• SAP additionally objects to certain questions herein on the basis of improper form.</li> </ul> <i>Sustained</i>
110:1-18.	<ul style="list-style-type: none"> <li>• SAP objects to this question on the basis of improper form.</li> </ul> <i>Sustained</i>
111:23-112:13.	<ul style="list-style-type: none"> <li>• SAP objects to this question on the basis of improper form.</li> </ul> <i>Sustained</i>
114:8-16.	<ul style="list-style-type: none"> <li>• SAP objects to this question on the basis of improper form.</li> </ul> <i>Sustained</i>
115:12-123:1.	<ul style="list-style-type: none"> <li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li> <li>• SAP additionally objects to certain questions herein on the basis of improper form.</li> </ul> <i>Sustained</i>
125:19-132:10.	<ul style="list-style-type: none"> <li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li> <li>• SAP additionally objects to certain questions herein on the basis of improper form.</li> </ul> <i>Sustained</i>
134:19-138:6.	<ul style="list-style-type: none"> <li>• SAP objects to these questions and answers under Federal Rule of Evidence 602.</li> <li>• SAP additionally objects to certain questions herein on the basis of improper form.</li> </ul> <i>Sustained</i>

*Lesly Dills*  
*US District Judge*